

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF INSURANCE, SECURITIES AND BANKING**

IN THE MATTER OF)

Surplus Review and Determination)
for Group Hospitalization and Medical)
Services, Inc.)

Order No.: 14-MIE-010

**ORDER ON DC APPLESEED REQUEST FOR DISCLOSURE OF CONFIDENTIAL AND
PROPRIETARY INFORMATION**

The D.C. Appleseed Center for Law and Justice, Inc. (“DC Appleseed”) has requested that the Commissioner of the Department of Insurance, Securities, and Banking (the “Commissioner”) disclose certain confidential and proprietary information furnished in the course of these proceedings by Group Hospitalization and Medical Services, Inc. (“GHMSI”) and its consultant, Milliman, Inc. (“Milliman”) to the Commissioner and the Commissioner’s consultant, Rector & Associates (“Rector”).

In support of its request, DC Appleseed cites a footnote in the District of Columbia Court of Appeals decision in *D.C. Appleseed Center for Law and Justice v. District of Columbia Department of Insurance, Securities and Banking*, 54 A.3d 1188 (D.C. 2011), in which the court discusses a statement by the Commissioner that she had decided not to rely on an actuarial report submitted by DC Appleseed’s consultant, Actuarial Risk Management (“ARM”), in evaluating GHMSI’s 2008 surplus because “the methodology [ARM] employed is unclear, and ARM lacked all the necessary data from GHMSI.” *Id.* at 1219 n. 41. In response to this statement, the court opined that “to the extent that the report was rejected because ARM ‘lacked all the

necessary data from GHMSI,' the Commissioner has a role to play in ensuring that the proceedings are fair to all participants and that the regulated entity discloses information (subject to appropriate agreements and limitations on use) necessary to the development of analyses by participants that contribute to the Commissioner's determination." *Id.*

In the present proceedings, the Commissioner has met the standard for disclosure articulated by the Court of Appeals. The Commissioner has taken extensive steps to ensure that the proceedings are fair to all participants and that sufficient information has been disclosed to DC Appleseed to allow it to develop analyses that contribute to the Commissioner's determination. Thus, the Commissioner has involved DC Appleseed in every step of the proceedings, which has included disclosing substantial data so that DC Appleseed could prepare its own analysis of GHMSI's surplus. As DC Appleseed itself has noted, it has had "extensive engagement with [the Department of Insurance, Securities and Banking ("DISB")]. . . , its consultants, and GHMSI. . ." in the critical stage of the proceedings leading up to the hearing held June 25, 2014. *D.C. Appleseed's Motion to Intervene as a Party, Motion to Modify Second Scheduling Order, and Motion to Modify Standard Hearing Procedures*, at 4. This engagement included four lengthy sets of questions and data requests from DC Appleseed, each followed by detailed written responses and data disclosures from DISB and its expert consultants, as well as several conference calls among DC Appleseed, DISB staff and consultants, and GHMSI to discuss and clarify DC Appleseed's questions and data requests in preparation for response.

At this point, DC Appleseed does not lack any necessary data to develop analyses that will contribute to the Commissioner's review and determination. Indeed, DC Appleseed and its consultant, Mark Shaw of United Health Actuarial Services, Inc., have provided the Commissioner with extensive and detailed analyses of GHMSI's surplus and specific

recommendations concerning appropriate surplus levels for GHMSI. For example, on June 10, 2014, Mr. Shaw submitted a 61-page report to DISB containing a detailed analysis of GHMSI's surplus backed by supporting data (the "Shaw Report"). The Shaw Report includes analyses and recommendations by Mr. Shaw based on his ability to recreate the stochastic model relied upon by Milliman and Rector in their own analyses. According to Mr. Shaw, "We recreated the Stochastic Model used by Milliman and Rector and are able to quantify the differences in the losses from the Stochastic Model accurately using objective, validating assumptions." Shaw Report, at 3.

There are other reasons as well for not disclosing the requested information. The information requested by DC Appleseed is highly confidential and proprietary. The Commissioner is mindful of the competitive harm that could result to GHMSI and Milliman if this information were disclosed. The Commissioner also is mindful of the chilling effect disclosure could have on future submissions of confidential and proprietary information to DISB by regulated entities if GHMSI and Milliman's confidential information is disclosed here without good cause. Finally, as discussed below, much of the information requested by DC Appleseed is not relevant to the Commissioner's determination in this matter, and therefore any analysis developed by DC Appleseed in reliance on such information would be of no value to the Commissioner's determination.

The specific information for which Appleseed seeks disclosure is as follows:

1. GHMSI's Business Plan for 2014, 2015 and 2016. In particular, DC Appleseed seeks disclosure of GHMSI's surplus projections for 2014-2016 contained in the Three-Year Business Plan. *See DC Appleseed Letter to Commissioner, Re: Surplus Review and*

Determination for Group Hospitalization and Medical Services, Inc., dated October 15, 2014, at 2.

The Business Plan was provided to GHMSI's board of directors in December 2013 and contains projections for the years 2014, 2015 and 2016. Business planning documents are among the most highly confidential and proprietary materials possessed by a company. Thus, disclosure of the Business Plan could cause substantial competitive harm to GHMSI. Moreover, the focus of these proceedings is on determining whether GHMSI's surplus as of December 31, 2011 is excessive under the standards set forth in D.C. Official Code § 31-3506(e) (2012 Repl.). A Business Plan prepared in December 2013 with projections for the years 2014-2016 is of limited relevance to this determination. Given the limited relevance of the Business Plan and the risk of competitive harm to GHMSI if it is disclosed, the Commissioner does not believe it is necessary or appropriate to disclose it.

Attachment B to GHMSI's September 5, 2014 submission to the Commissioner.

Attachment B contains among other things, the rules and requirements of the Blue Cross Blue Shield Association ("BCBSA") that apply when a Blue Cross Blue Shield plan reaches certain risk-based capital levels. The information contained in Attachment B is confidential and proprietary to BCBSA. GHMSI and BCBSA have requested that it be treated as confidential and not disclosed.

The body of GHMSI's September 5, 2014 submission to the Commissioner, which has been made a part of the public record, contains a detailed discussion of the rules and requirements of BCBSA that apply when a Blue Cross Blue Shield plan reaches certain risk-based capital levels. Although Attachment B contains additional detail, the Commissioner does not believe the information in Attachment B adds in any material way to the information that has

been disclosed publicly. Thus, in reaching his determination, the Commissioner intends to rely on the information concerning BCBSA's rules and procedures that has been made a part of the public record in this proceeding. Accordingly, the Commissioner does not believe the disclosure of Attachment B would enable DC Appleseed to provide any analysis that would materially contribute to his determination.

2. Attachment C to GHMSI September 5, 2014 submission to the Commissioner.

This document contains a confidential and proprietary analysis of the operating expenses of GHMSI and affiliates as compared to the operating expenses of for-profit companies. The Commissioner does not believe Attachment C is relevant to his determination regarding whether GHMSI's surplus is excessive and does not intend to rely on it in making his determination. Thus, the Commissioner does not believe the disclosure of Attachment C would allow DC Appleseed to provide any analysis that would be relevant to his determination.

3. Certain technical materials dated February 23, 2013 provided by Milliman, Inc. to Rector (the "Milliman Technical Materials"). GHMSI and Milliman have requested that the Commissioner maintain the confidentiality of these materials because they reveal competitively sensitive, trade secret and proprietary analytic tools and methods of Milliman. As discussed above, the Commissioner believes DC Appleseed has been provided with all of the information it needs to provide analyses that contribute to the Commissioner's determination in these proceedings, as evidenced by the extensive analyses it has provided to date. The Commissioner does not believe disclosure of the Milliman Technical Materials is necessary to allow DC Appleseed to provide analyses that contribute to the Commissioner's determination.

Accordingly, the Commissioner hereby ORDERS that DC Appleseed's requests for disclosure be denied.

Dated: October 24, 2014



Chester A. McPherson, Acting Commissioner

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